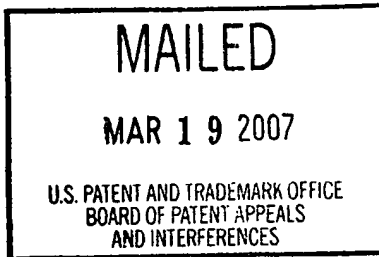


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JOHN M. PACKES JR., JAY S. WALKER
DANIEL E. TEDESCO,
STEPHEN C. TULLEY and KEITH BEMER

Application 09/409,041

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on November 8, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is below:

The Examiner's Answer mailed May 19, 2006 does not list the prior art of record being relied upon in the rejections. Page 2 of the examiner's answer contains a section heading titled **"(8) Evidence Relied Upon"** that states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal". The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e-g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

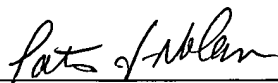
Application No. 09/409,041

Since the examiner's 35 U.S.C. §103(a) rejection is based on a prior art references, (U.S. Patents) these references and any other evidence relied upon should be listed under the "(8) **Evidence Relied Upon**" heading in the examiner's answer. Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
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PJN/vsh

Application No. 09/409,041

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